

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Accessibility of User Interfaces, and Video	)	MB Docket No. 12-108
Programming Guides and Menus	)	

**REPLY COMMENTS OF CENTURYLINK**

CenturyLink, Inc. (“CenturyLink”) files these reply comments in the above-referenced proceeding to underscore that the goals of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) would be best achieved if the Commission: (1) adopts clear legal rules that avoid creating regulatory disparities; (2) clarifies that the eleven functions identified in the Video Programming Accessibility Advisory Committee (“VPAAC”) report constitute a safe harbor; (3) concludes that the activation mechanism required under Section 205 of the CVAA need not be provided in a “single step” or enable video description; and (4) grants an exception for small cable systems with fewer than 20,000 subscribers.

**I. MOST COMMENTERS AGREE THAT THE COMMISSION SHOULD ADOPT CLEAR LEGAL RULES THAT AVOID CREATING REGULATORY DISPARITIES.**

Regulation undermines competition if it imposes disparate legal requirements on comparable equipment. Consequently, CenturyLink agrees with the many commenters who urged the Commission to be clear in its implementing regulations that equipment used by MVPD subscribers to access MVPD-delivered video programming are subject only to Section 205, and not to Section 204, regardless of whether such equipment is supplied by MVPDs or other entities.<sup>1</sup>

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<sup>1</sup> See Accessibility of User Interfaces, and Video Programming Guides and Menus, *Notice of Proposed Rulemaking*, MB Docket No. 12-108 (May 30, 2013) (statement of Commissioner (continued...))

The Commission’s proposed interpretation, on the other hand, would subject identical or very similar equipment to different legal requirements: Section 205 would govern only that equipment provided to consumers by MVPDs, while Section 204 would govern all other equipment provided at retail. As multiple commenters explained, MVPDs sometimes sell equipment to end users just like retailers do; end users typically treat MVPD-provided navigation devices and navigation devices provided at retail as substitutes; and sometimes MVPDs provide the same navigation devices to their subscribers that the subscriber could otherwise purchase at retail.<sup>2</sup> Accordingly, the Commission’s proposed interpretation of the scope of Sections 204 and 205 would by its nature encourage regulatory arbitrage by arbitrarily imposing different standards on equipment based merely on the identity of the party making the equipment available to the consumer.

At the same time, regulation creates uncertainty and unintended consequences if it does not recognize meaningful differences between the roles equipment manufacturers and service providers play in the video programming ecosystem. CenturyLink therefore agrees with Verizon that the Commission should clarify that the obligations and liabilities for manufacturers of navigation devices are distinct from those of MVPDs, which serve the limited role of providing navigation devices to their subscribers.<sup>3</sup> Specifically, equipment manufacturers should be responsible for designing, producing, and distributing navigation devices that comply with the Commission’s rules. In contrast, MVPDs should be responsible for providing navigation devices

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Pai); Comments of American Cable Association, at 1–5 (July 15, 2013) [“ACA Comments”]; Comments of AT&T, at 4 (July 15, 2013) [“AT&T Comments”]; Comments of Verizon and Verizon Wireless, at 2–6 (July 15, 2013) [“Verizon Comments”].

<sup>2</sup> See, e.g., AT&T Comments, at 5–6.

<sup>3</sup> Verizon Comments, at 11–13.

to their subscribers that are compliant, to the extent such devices are available in the marketplace. This approach is similar to that taken in the IP closed captioning proceeding; just as video programming owners are in the best position to determine whether a programming file requires captions, equipment manufacturers are in the best position to assess how the accessibility requirements can be met for the navigation devices that they develop and design.<sup>4</sup>

While set-top boxes and other navigation devices clearly fall within the text of Section 205, the Commission should clarify that mobile applications that MVPDs offer to subscribers for accessing MVPD-delivered programming are neither a “navigation device” nor a “digital apparatus” for purposes of the Commission’s rules. These mobile applications, which consist entirely of software code, are not “navigation devices” because they are neither “devices” nor “equipment.”<sup>5</sup> In addition, the term “digital apparatus” should be interpreted consistent with the “apparatus” definition in the IP closed captioning rules. Under the IP closed captioning rules, a mobile application is not deemed an “apparatus” unless it is “integrated software (that is, software installed in the device by the manufacturer before sale or that the manufacturer requires the consumer to install after sale).”<sup>6</sup> CenturyLink is not aware of any navigation device

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<sup>4</sup> Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, *Report and Order*, 27 FCC Rcd. 787, ¶ 19 (rel. Jan. 13, 2012) [“IP Closed Captioning Report and Order”].

<sup>5</sup> 47 C.F.R. § 76.1200(c) (defining “navigation devices” to include “[d]evices such as converter boxes, interactive communications *equipment*, and other *equipment* used by consumers to access” MVPD programming and services) (emphasis added). Notably, the CVAA mandates that the Commission apply this specific definition. Pub. L. No. 111-260, § 204, 124 Stat. 2751 (2010) (stating that the “term ‘apparatus’ does not include a navigation device, as such term is defined in section 76.1200 of the Commission’s rules”).

<sup>6</sup> IP Closed Captioning Report and Order, ¶ 93; *see also* Implementation of Sections 716 and 717 of the Communications Act of 1934, As Enacted By the Twenty-First Century Communications and Video Accessibility Act of 2010, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd. 14557, ¶ 13 (Oct. 7, 2011) (concluding that “there is no liability for a manufacturer of end user equipment for the accessibility of software that is independently (continued...)”).

manufacturers that either pre-install MVPD-provided mobile applications for accessing MVPD-delivered programming or require end users to install such applications after sale. Unless and until one of these conditions is met, such applications should not be deemed to be “digital apparatus.” This approach creates consistency across the Commission’s accessibility rules and provides entities certainty regarding the scope of their legal obligations.

In addition, CenturyLink agrees with AT&T that Section 204 and Section 205 should share a uniform compliance deadline of no fewer than three years. The lessons learned from the IP closed captioning proceeding are applicable here. In that proceeding, the Commission set different deadlines for VPDs and equipment manufacturers to come into compliance with new enhanced display closed captioning requirements.<sup>7</sup> This disparate treatment created technical, competitive, and other practical challenges that ultimately resulted in the Commission granting VPDs an extension to come into compliance at the same time as equipment manufacturers.<sup>8</sup> Similar challenges are likely to emerge here, especially if the Commission interprets the scope of Sections 204 and 205 in a manner that leaves any overlap in the types of devices and equipment that are covered by each section. Rather than waiting for the likely extension request, the Commission should apply a uniform, three-year compliance deadline for all regulated entities from the start.

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selected and installed by the user, or that the user chooses to use in the cloud”). Notably, unlike the CVAA’s advanced communications services provisions — which regulate access to advanced communications equipment *and* services — Section 204 focuses exclusively on equipment and does not contain a separate service provider provision.

<sup>7</sup> IP Closed Captioning Report and Order, ¶¶ 51, 122 (requiring VPD-provided applications to comply with the enhanced display obligations by September 30, 2012, while providing equipment manufacturers until January 1, 2014, to comply with the same requirements).

<sup>8</sup> Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, *Memorandum Opinion and Order*, 27 FCC Rcd. 9630 (Aug. 17, 2012).

## **II. THE RECORD DEMONSTRATES THAT THE ELEVEN FUNCTIONS IDENTIFIED IN THE VPAAC REPORT SHOULD CONSTITUTE A COMPLIANCE SAFE HARBOR.**

The text of the CVAA explicitly constrains the Commission’s authority to require accessibility for “appropriate” and “built-in” apparatus functions. Interpreting the statute to mean that *all* end-user functions must be accessible or that *any* particular function must be included would render the words “appropriate” and “built-in” meaningless. Under common canons of statutory interpretation, such a result must be avoided.<sup>9</sup>

CenturyLink strongly supports and shares the Commission’s objective of improving accessibility and usability by individuals who are blind or visually impaired. Applying the eleven functions identified in the VPAAC report as a non-exhaustive list, however, would not only be contrary to the text of the CVAA but also would create a moving compliance target that would frustrate efforts by companies acting in good faith to improve accessibility.

Rather than adopting vague rules that may be vulnerable to legal challenge, CenturyLink agrees with AT&T that the Commission should clarify that the eleven functions that are identified in the VPAAC report constitute a regulatory safe harbor.<sup>10</sup> This does not mean that manufacturers of digital apparatus or navigation devices will try to skirt their accessibility obligations by refusing to build in appropriate functions or that the only functions that will be accessible will be the eleven functions identified in the VPAAC report. Because these eleven functions, such as power on/off and volume adjust, typically are essential to the operation of the apparatus or navigation device, they often will be included. As AT&T explained, however, there

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<sup>9</sup> Office of the General Counsel, U.S. General Accounting Office, I PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, at 2-87 (3d ed. 2004) (describing the “no surplusage” canon of statutory interpretation).

<sup>10</sup> AT&T Comments, at 9–10.

may be some circumstances where a digital apparatus or navigation device is “designed to perform a narrow function or access video programming only on a secondary basis and, thus, may not be designed or manufactured to perform all of the 11 VPAAC essential functions.”<sup>11</sup> In addition, MVPDs, equipment manufacturers, and other regulated entities — which are constantly pushed to do better in a highly competitive consumer electronics and video programming market — can, and likely will, go above and beyond these benchmarks. Lastly, to the extent what is “appropriate” changes over time as new capabilities and functions emerge, the Commission can expand the list of safe harbor functions through notice-and-comment rulemaking so that the rules remain relevant and clear.

### **III. CENTURYLINK AGREES WITH COMMENTERS THAT THE SECTION 205 ACTIVATION MECHANISM NEED NOT BE A “SINGLE STEP” OR ENABLE VIDEO DESCRIPTION.**

CenturyLink agrees with other commenters that requiring the mechanism to activate closed captioning in a single step is too narrow an interpretation.<sup>12</sup> The statutory language requires only that the activation mechanism be “reasonably comparable” to a button, key, or icon. Notably, even these mechanisms sometimes require more than one click to activate closed captioning functionality. For example, on a conventional television or cable remote control a user may need to press a button multiple times to toggle between different closed captioning settings or utilize multiple buttons, such as up, down, and “okay” buttons, to make a selection. For these reasons, in addition to the statutory directive that the Commission afford ample flexibility for companies to comply, a “single-step” requirement should be avoided.

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<sup>11</sup> AT&T Comments, at 12.

<sup>12</sup> *Id.* at 15–17; Comments of DIRECTV, LLC, at 8–9 (July 15, 2013) [“DIRECTV Comments”].

Moreover — unlike Section 204, which references video description — Section 205 does *not* require an activation mechanism for video description.<sup>13</sup> CenturyLink agrees with AT&T that the phrase “accessibility features” in Section 205 “merely describes the accessibility solution to which the mandated mechanism must be reasonably comparable,” and does not indirectly impose a video description requirement.<sup>14</sup> If Congress had wanted to require video description in both sections, rather than just Section 204, it would have stated so explicitly.

#### **IV. CENTURLINK AGREES WITH THE AMERICAN CABLE ASSOCIATION THAT AN EXEMPTION FOR SMALL CABLE SYSTEMS IS WARRANTED.**

CenturyLink supports the American Cable Association’s (“ACA”) request for an exemption for cable systems with fewer than 20,000 subscribers.<sup>15</sup> Both Sections 204 and 205 impose new accessibility requirements on digital apparatus and navigation devices used to view video programming only where these steps are “achievable.” In affording the Commission explicit authority to exempt small cable systems, Congress understood that it often will not be achievable for such systems to undertake the cost and overcome the technical challenges needed to come into compliance and that requiring these small systems to separately seek individual waivers would be unduly expensive and inefficient.

As ACA explained in its comments, small cable systems face a number of unique challenges that support an exemption in these circumstances. For example, a number of small systems are unlikely to be in a position to undertake the tremendous expense and effort required to upgrade the equipment installed at their headends and throughout their systems to support new navigation devices that meet the accessibility requirements. Equipment manufacturers have no

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<sup>13</sup> AT&T Comments, at 17; DIRECTV Comments, at 13.

<sup>14</sup> AT&T Comments, at 17.

<sup>15</sup> ACA Comments, at 6–9.

incentive to develop and design equipment that is compatible with these legacy systems. As a result, even if these small cable systems provided their subscribers with new navigation devices, these devices likely would not function properly. In addition, even where a small cable system is able to make the necessary upgrades to its backend systems and equipment, it may not be able to acquire compliant navigation devices from equipment manufacturers, which may offer only a limited supply until they are able to scale their manufacturing processes for a mass market.

An exception is particularly appropriate here because it is unlikely to frustrate the CVAA's objective of improving accessibility for individuals who are blind or visually impaired. As the *Notice of Proposed Rulemaking* recognizes, there is a robust retail market for a variety of consumer electronics that can be used to view video programming, including video programming delivered by MVPDs.<sup>16</sup> These devices provide reasonable alternatives for individuals who are served by cable systems with fewer than 20,000 subscribers.

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<sup>16</sup> Accessibility of User Interfaces, and Video Programming Guides and Menus, *Notice of Proposed Rulemaking*, FCC 13-77, ¶¶ 9–10, 19 (May 30, 2013).



## CONCLUSION

CenturyLink has long been committed to improving accessibility and usability for all of its subscribers, including those who are blind or visually impaired. CenturyLink looks forward to working with the Commission as it continues its process of implementing Sections 204 and 205 of the CVAA.

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